

# **EXHIBIT 2**

**In The Matter Of:**

*Alan Thibault v.  
Edward Wierszewski*

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*Marty Bugbee  
February 23, 2016*

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*Carroll Court Reporting and Video  
175 Cass Avenue  
Mt. Clemens, MI 48043*



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February 23, 2016

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

1 ALAN THIBAULT,  
2  
3 Plaintiff,  
4  
5 vs. Case No. 2:15-cv-11358  
6 EDWARD WIERSZEWSKI, individually  
7 and in his official capacity as a  
8 Public Safety Officer,  
9 Defendant.  
10  
11 DEPONENT: MARTY BUGBEE  
12 DATE: Tuesday, February 23, 2016  
13 TIME: 10:45 a.m.  
14 LOCATION: 26700 Lahser Road  
15 Southfield, MI  
16 REPORTER: Nikki Hatz, CSR-2377  
17  
18 APPEARANCES:  
19 MR. SOLOMON RADNER  
20 1-800-Law-Firm  
21 26700 Lahser Road Suite 400  
22 Southfield, MI 48033  
23 248-291-9712  
24  
25 Appearing on behalf of Plaintiff.

MR. GEORGE M. DEGROOD  
Thomas Degrood and Witenoff  
400 Galleria Officentre Suite 550  
Southfield, MI 48034  
248-353-4450  
Appearing on behalf of Defendant.

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I N D E X

|                              |      |
|------------------------------|------|
| 1 WITNESS:                   | PAGE |
| 2 MARTY BUGBEE               |      |
| 3 Examination by Mr. Degrood | 3    |
| 4 Examination by Mr. Radner  | 85   |

  

E X H I B I T S

|                  |                                |      |
|------------------|--------------------------------|------|
| 10 NUMBER        | IDENTIFICATION                 | PAGE |
| 11 Exhibit No. 1 | Curriculum Vitae               | 4    |
| 12 Exhibit No. 2 | Photocopy of CD                | 8    |
| 13 Exhibit No. 3 | Training Course Reference      | 19   |
| 14 Exhibit No. 4 | Deposit Slip                   | 20   |
| 15 Exhibit No. 5 | National Weather Service Temps | 27   |
| 16 Exhibit No. 6 | Handwritten Notes/NHTSA review | 28   |
|                  | 9 pages                        |      |
| 17 Exhibit No. 7 | Handwritten Notes/Videotape    | 31   |
|                  | Review/30 pages                |      |
| 18 Exhibit No. 8 | 17 Page Police Report          | 45   |
| 19 Exhibit No. 9 | Training Certificates          | 76   |

20  
21 \*attached.  
22  
23  
24  
25

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Southfield, MI  
Tuesday, February 23, 2016

\* \* \*

MARTY BUGBEE,

after having been first duly sworn to tell the  
truth, the whole truth and nothing but the truth,  
was examined and testified as follows:

EXAMINATION

BY MR. DEGROOD:

Q. Good morning. Would you state your full  
legal name for the record?

A. My name is Marty George Bugbee. Spelling:  
M-a-r-t-y. G-e-o-r-g-e. B-u-g-b-e-e.

Q. Mr. Bugbee, my name is George DeGrood. I  
represent the defendants in this lawsuit that was  
commenced against them on behalf of Mr. Alan Thibault.

MR. DEGROOD: The deposition is being  
taken pursuant to Notice and pursuant to the  
Michigan, the actual Federal Rules of Evidence and  
the Federal Rules of Civil Procedure.

Q. Could you please give me your residential  
address.

A. 1380 Larkmoor Boulevard. L-a-r-k-m-o-o-r.

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Boulevard. Berkley, Michigan 48073.  
(Deposition Exhibit No. 1 marked for  
identification.)

Q. Mr. Bugbee, I'm going to hand to you what has  
been marked as Deposition Exhibit No. 1. For the record  
could you please identify what this is.

A. This is my curriculum vitae.

Q. Would you agree it's two pages long?

A. Yes.

Q. There's nothing in your C.V. that has any  
type of fee schedule with respect to any of the efforts  
that you might provide to individuals who hire you for  
your services. True?

A. Yes, sir. That is true.

Q. Yesterday on February 22nd, 2016, you  
forwarded to my office a request that indicated that I  
would need to have a check in the amount of \$700 for a  
minimum of a four hour appearance fee for your deposition  
today. Correct?

A. Correct.

Q. Have I so far given you the 700 check?

A. Yes, you have, sir.

Q. Your hourly fee is identified as \$175 per  
hour. My question to you is: Is that the fee, 175 per  
hour, that you charge for review as well as for

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1 testifying in court?  
2 A. Yes.  
3 Q. Should it be necessary for you to proceed to  
4 court, do you also do a four hour minimum or do you go by  
5 straight hourly rate?  
6 A. It would be by straight hourly rate.  
7 Q. It appears to me in my review of Exhibit 1  
8 that for the majority of your adult life you were  
9 employed by the State of Michigan as a Michigan State  
10 Police Trooper?  
11 A. That is correct.  
12 Q. That began in April of 1989?  
13 A. Yes, sir.  
14 Q. And you retired from the Michigan State  
15 Police in April of 2011?  
16 A. That's correct.  
17 Q. What was your rank at the time of your  
18 retirement from the Michigan State Police?  
19 A. I was a Detective First Lieutenant.  
20 Q. At what location or post were you working  
21 when you last worked for the State Police?  
22 A. I was the Commander of the Information  
23 Sharing Environment Section and that was located at the  
24 Hidta: H-i-d-t-a, Hidta Office in downtown Detroit.  
25 Q. Is that in the New Center area?

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1 A. Yes, sir. That's near Grand Circus Park,  
2 right near the Tiger Stadium, Comerica Park.  
3 Q. Now it indicates -- strike that.  
4 Have you ever been certified as a  
5 standard sobriety field test expert: Yes or no?  
6 A. Yes.  
7 Q. When were you so certified as an instructor  
8 for standard field sobriety testing?  
9 A. You say expert or instructor?  
10 Q. As an instructor.  
11 A. I was a Field Training Officer with the  
12 Michigan State Police, as well as with other the police  
13 department prior to Michigan State Police. And in that  
14 capacity I instructed other officers and troopers on  
15 field sobriety testing and the arrest process for alcohol  
16 enforcement.  
17 Q. The prior law enforcement agency that you  
18 worked with before joining the State Police was what  
19 agency?  
20 A. I was a police officer with Chesterfield  
21 Township Police Department. I graduated from the Macomb  
22 Police Academy in 1985. I worked there on a part time  
23 for several months. Then I went to the Plymouth Township  
24 Police Department, where I worked from '85 to '89. There  
25 I served as a Field Training Officer.

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1 Q. Now as I understand a Field Training  
2 Officer's role, as it existed when you were at both the  
3 Plymouth Township and Michigan State Police, that was  
4 pretty much hands on experience with respect to -- I'll  
5 use the term rookie or a new hire in the agency.  
6 Correct?  
7 A. That's correct.  
8 Q. So they would in essence ride along with you  
9 if you were doing road patrol and looking for possible  
10 individuals who were violating traffic laws?  
11 A. Yes.  
12 Q. And you would perhaps point out to them a  
13 situation and perhaps quiz them, etcetera, to make sure  
14 that they fully understood the law and were capable of  
15 applying same to given circumstances?  
16 A. No. It's a little more complex than that.  
17 Q. Well, did you ever sit down with your Field  
18 Training Officers with respect to teaching any field  
19 sobriety testing with any course textbook or anything of  
20 that nature? Yes or no.  
21 A. Yes.  
22 Q. What textbook would you have used?  
23 A. It would have been the Field Training Manual.  
24 Q. For the State Police?  
25 A. No. For the Plymouth Township Police

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1 Department and then also the Michigan State Police.  
2 Q. Now I see a fair amount of materials in front  
3 of you and did you bring materials in response to the  
4 Notice to Produce that was attached?  
5 A. Yes, I did.  
6 Q. What did you bring with you; what materials?  
7 A. Well, I brought a disk that I burned for you  
8 that contains the National Highway Transportation Safety  
9 Administration manuals for three different levels of  
10 alcohol enforcement. One being the DUI or DWI Detection  
11 Manual for Standard Field Sobriety Testing. The other  
12 manual being the Advanced Alcohol Enforcement Manual and  
13 the third manual that is on here is the Drug Recognition  
14 Expert Manual.  
15 Q. All right.  
16 A. Also other resources. Just some  
17 correspondences and some --  
18 Q. Let me just stick with the first one here.  
19 MR. DEGROOD: We'll mark this as  
20 Exhibit 2, please.  
21 (Deposition Exhibit No. 2 marked for  
22 identification.)  
23 Q. Mr. Bugbee, with respect to Exhibit No. 2, do  
24 you have an index somewhere as to what is on here or were  
25 you testifying from memory?

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| BUGBEE  | Page 9  | BUGBEE   | Page 11 |
|---|---------|--|---------|
| 1 A. Testifying from memory.                                |         | 1 A. Possibly.   |         |
| 2 Q. With respect to the first manual that you              |         | 2 Q. What about the other two manuals, the NHTSA             |         |
| 3 identified, what was that again?                          |         | 3 manual, when did you last review that?                     |         |
| 4 A. That was the DWI Detection Manual. That's              |         | 4 A. I don't recall when that was either.                    |         |
| 5 just my memory of what the title was. It's not specific.  |         | 5 Q. More likely than not when you were still                |         |
| 6 Q. What edition was that?                                 |         | 6 engaged as an officer with the Michigan State Police?      |         |
| 7 A. Don't know.  |         | 7 A. Possibly.   |         |
| 8 Q. What was the second manual?                            |         | 8 Q. What about with the DWI Detection Manual,               |         |
| 9 A. That was the -- I would like to look at my --          |         | 9 same question. When did you last utilize that?             |         |
| 10 Q. Go ahead. You can pull out your notes,                |         | 10 A. I don't recall that either.                            |         |
| 11 whatever.  |         | 11 Q. Probably when you were still working at the            |         |
| 12 MR. RADNER: If you like, I can turn                      |         | 12 State Police?   |         |
| 13 my laptop on and we can all look together at it.         |         | 13 A. Possibly.  |         |
| 14 That's why I brought my laptop.                          |         | 14 Q. Would I be correct that at no time since               |         |
| 15 MR. DEGROOD: That's okay. I can't                        |         | 15 retiring from the Michigan State Police in April of 2011, |         |
| 16 read electrons.  |         | 16 were you involved in any type of traffic stops of         |         |
| 17 A. The second manual is the Advanced Roadside            |         | 17 citizens on the roadway suspected of either erratic       |         |
| 18 Impaired Driving Enforcement Manual.                     |         | 18 driving or operating under the influence?                 |         |
| 19 Q. What edition was that?                                |         | 19 A. That's correct.  |         |
| 20 A. R5 slash 13 edition.                                  |         | 20 Q. So with respect to the date of December 5th,           |         |
| 21 Q. What was the third manual on that?                    |         | 21 2014, you were not actively engaged in any type of        |         |
| 22 A. The third manual is the training manual.              |         | 22 traffic stops for any law enforcement agencies. Correct?  |         |
| 23 It's a NHTSA manual, NHTSA being: National Highway       |         | 23 A. That's correct.  |         |
| 24 Transportation Safety Administration Manual, training    |         | 24 Q. Would I also be correct that in December of            |         |
| 25 manual for DRE.  |         | 25 2014, you were no longer engaged in field training        |         |
| BUGBEE  | Page 10 | BUGBEE   | Page 12 |
| 1 Q. What edition was that?                                 |         | 1 exercises as a field training officer?                     |         |
| 2 A. Don't know off the top of my head.                     |         | 2 A. That's correct.   |         |
| 3 Q. Were any of these manuals the manuals that             |         | 3 Q. Would your activities as a field training               |         |
| 4 you procured from Michigan State Police Sergeant Perry    |         | 4 officer have ceased when you retired in April of 2011,     |         |
| 5 Curtis within the past two or three weeks?                |         | 5 from the Michigan State Police?                            |         |
| 6 A. Perry Curtis. I didn't speak to a Perry                |         | 6 A. That's correct.   |         |
| 7 Curtis.   |         | 7 Q. Would I be correct that at no time have you             |         |
| 8 Q. Did you procure any of those manuals from the          |         | 8 ever participated in a lecture as part of instruction in   |         |
| 9 Michigan State Police within the last two or three weeks? |         | 9 field sobriety tests?                                      |         |
| 10 A. I procured the Standard Field Sobriety Test           |         | 10 A. Participated in as in?                                 |         |
| 11 Manual, the first one.                                   |         | 11 Q. As a lecturer to a group of individuals who            |         |
| 12 Q. When did you procure that?                            |         | 12 were undergoing training?                                 |         |
| 13 A. It would have been within the last two weeks.         |         | 13 A. No. I have not done that.                              |         |
| 14 Q. From where did you procure it?                        |         | 14 Q. Now you indicated that you also had the DRE            |         |
| 15 A. Directly from Detective or -- excuse me.              |         | 15 Manual?   |         |
| 16 From First Lieutenant James Flegal.                      |         | 16 A. Correct.   |         |
| 17 Q. James and his last name?                              |         | 17 Q. When did you first receive a copy of a DRE             |         |
| 18 A. James Flegal: F-l-e-g-a-l. He's the Section           |         | 18 Manual?   |         |
| 19 Commander for Traffic Services Division.                 |         | 19 A. I don't recall when I first looked at one.             |         |
| 20 Q. Before procuring that manual from Sergeant            |         | 20 Q. Was it in connection with your review of this          |         |
| 21 Flegal when is the last time that you had reviewed that  |         | 21 case?   |         |
| 22 manual from today going backwards?                       |         | 22 A. That was the last time I looked at it. I               |         |
| 23 A. I don't recall.                                       |         | 23 don't recall prior to that when I looked at one.          |         |
| 24 Q. Would it have been when you were still                |         | 24 Q. Is it possible that the first time that you            |         |
| 25 employed as a Michigan State Police Officer?             |         | 25 saw a DRE Manual was as a result of your participation in |         |

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1 this lawsuit?

2 A. No. I believe I have reviewed one in the

3 past.

4 Q. Am I correct that you are not a -- when you

5 use the term DRE, what are you referring to?

6 A. Drug Recognition Expert.

7 Q. Have you ever taught the DRE curriculum?

8 A. No, I have not.

9 Q. Have you ever been certified to teach the DRE

10 curriculum?

11 A. No, I have not.

12 Q. Have you ever participated as a student in

13 the DRE curriculum?

14 A. No, I have not.

15 Q. So you have never been trained and do not

16 hold yourself out as a drug recognition expert. Correct?

17 A. Correct.

18 Q. Now as a result of your involvement in this

19 lawsuit -- and by the way, when were you first contacted

20 to consider becoming engaged in this matter?

21 A. It would have been I think three weeks ago.

22 Q. Since being retained approximately three

23 weeks ago in this matter, have you kept a log of the

24 amount of time that you have spent in your endeavors?

25 A. No, I haven't.

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1 Q. When you were first contacted, by whom were

2 you first contacted approximately three weeks ago?

3 A. I was contacted by Solomon Radner.

4 Q. Had you ever provided any review services for

5 purposes of rendering any type of opinions for Mr. Radner

6 in any cases prior to your involvement in this one?

7 A. No, I have not.

8 Q. How about with respect to Mr. Radner's law

9 firm, 1-800-Law-Firm, have you ever been retained by the

10 firm to participate in providing review and/or opinions

11 with respect to any type of police work besides this

12 case?

13 A. No, I have not.

14 Q. Do you in some fashion advertise your

15 availability to provide opinions concerning police

16 activities?

17 A. No.

18 Q. Do you have any idea how Mr. Radner

19 discovered your availability?

20 A. I believe it was through word of mouth.

21 Q. Word of mouth regarding who?

22 A. I don't know who he spoke to but he contacted

23 me and said he had talked to somebody who said to talk to

24 me.

25 MR. RADNER: I forgot that guy's name

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1 too or I would tell you.

2 MR. DEGROOD: That guy's name you

3 mean?

4 MR. RADNER: Yes.

5 MR. DEGROOD: It was a gal actually

6 and you forgot that conveniently.

7 MR. RADNER: It was a girl you said?

8 Q. Would I be correct that nowhere in Exhibit 1

9 do you indicate that you hold yourself out as an expert

10 in standard field sobriety testing?

11 A. That's correct.

12 Q. As you use the term standard field sobriety

13 testing, what does that mean to you?

14 A. Well, that means you're trained in the

15 capability to detect driving behaviors that could

16 indicate intoxication. Trained in collecting

17 observations of drivers from direct contact. Conducting

18 standardized testing to determine probable cause to make

19 arrests for driving under the influence of alcohol or

20 drugs.

21 Q. With respect to the three manuals that you

22 have reproduced on Exhibit No. 2, can you tell me with

23 respect to any of those manuals which if any sections of

24 those manuals were reviewed by you in formulating any

25 opinions you might be rendering here today?

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1 A. I reviewed each manual and every page over

2 the weekend.

3 Q. Do you have any recollection how long that

4 took to review every page of those three manuals?

5 A. Most of the weekend. I didn't log the time.

6 Q. How are you being paid for your services by

7 Mr. Radner; by the hour?

8 A. Flat fee.

9 Q. A flat fee?

10 A. Yes.

11 Q. What is that flat fee?

12 A. I provided a deposit slip indicating that in

13 my discovery to you. It's \$2,000.

14 Q. All right. So no matter if it takes one hour

15 or 60 hours it's a flat fee of \$2,000 for Mr. Radner.

16 Correct?

17 A. Correct.

18 Q. Would that be the basis upon which you have

19 failed to complete a log as to the time that you have

20 invested in this matter?

21 A. Tracking time didn't matter. No.

22 Q. So you're not keeping track of time at all.

23 It doesn't matter?

24 A. No.

25 Q. How do you ever determine whether or not you



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1 have made money, broke even or lost money with respect to  
2 the time and efforts put into your review process?  
3 A. I don't.  
4 Q. Have you testified in open court with respect  
5 to opinions of constitutional violations by police  
6 officers?  
7 A. No.  
8 Q. Have you testified in open court as an expert  
9 witness?  
10 A. As a police officer, yes.  
11 Q. When you were still employed by Michigan  
12 State Police?  
13 A. Right. Right.  
14 Q. Since retiring from the Michigan State  
15 Police, have you testified in open court as an individual  
16 rendering opinions critical of police officers?  
17 A. No, I have not.  
18 Q. Have you at any time testified in open court  
19 as an individual offering opinions substantiating the  
20 activities of police officers who are being sued for  
21 alleged wrongdoings?  
22 A. No, I have not.  
23 Q. So just so I'm clear. At no time since your  
24 retirement from Michigan State Police have you testified  
25 in any court in the State of Michigan, state court or

BUGBEE Page 18

1 federal court?  
2 A. Correct.  
3 Q. Have you testified in any other states?  
4 A. No.  
5 MR. RADNER: Just so we're clear.  
6 I'm just going to make a little objection here that  
7 you kind of went back from or you switched from  
8 asking him only if he has been qualified as an  
9 expert and asked questions for his opinions.  
10 Then you kind of wrapped that up with  
11 a question of: You have never testified in any  
12 state or federal court. I think that when he was  
13 answering, he was answering as to the being  
14 qualified as an expert for his opinions.  
15 MR. DEGROOD: Pardon me? What's your  
16 objection?  
17 MR. RADNER: I stated it already.  
18 MR. DEGROOD: Sounded like a treatise  
19 to me but that's okay.  
20 Q. What is the next item that you have brought  
21 with you?  
22 A. Well, it was a description of the drug or the  
23 training sequence for -- it was just a reference that I  
24 looked at while I was reviewing things.  
25 Q. May I see that?

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1 A. It's for the training courses that are  
2 offered by Michigan State Police in regard to alcohol  
3 enforcement, the different stages of training. It was  
4 just a reference that I had reviewed pursuant to your  
5 Discovery Order. I produced that as well because I had  
6 read it through the weekend.  
7 Q. Let's mark that Exhibit No. 3. Before you  
8 mark Exhibit No. 3.  
9 To your independent knowledge and  
10 recollection at the time of your retirement from the  
11 Michigan State Police, was there a drug recognition expert  
12 program available to officers in Michigan?  
13 A. I don't recall. I don't.  
14 MR. RADNER: What was Exhibit 3?  
15 Q. You don't recall or you don't know?  
16 A. I don't know if there was or not. I don't  
17 recall if I knew that at the time.  
18 Q. Okay.  
19 MR. DEGROOD: We'll now mark this as  
20 Exhibit 3.  
21 (Deposition Exhibit No. 3 marked for  
22 identification.)  
23 Q. What is the next item that you brought with  
24 you?  
25 A. The next item is what I had mentioned

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1 earlier. This is the deposit slip from the fee that I  
2 received from Mr. Radner in regard to this case. I  
3 received it on 1-26, 2016. I produced that in response  
4 to your Court Order.  
5 Q. All right. Let's mark that as our next  
6 Exhibit.  
7 (Deposition Exhibit No. 4 marked for  
8 identification.)  
9 Q. When Mr. Radner first contacted you did he  
10 meet with you or was it a telephone contact?  
11 A. Telephone contact.  
12 Q. What did you discuss with him during your  
13 initial contact and when in proximity to the date of  
14 1-26-16 of Exhibit 4 did that conversation first take  
15 place?  
16 A. I think it was a day or two prior to that  
17 1-26.  
18 Q. Do you remember how long the initial phone  
19 call lasted?  
20 A. No, I don't.  
21 Q. Did you take notes of any of the information  
22 that was imparted to you by Mr. Radner?  
23 A. No, I didn't.  
24 Q. Do you recall what it was that you discussed  
25 with Mr. Radner at that time?

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1 A. He said he had heard that I could help him  
2 out on a case and wanted to know if I was interested.  
3 Q. All right.  
4 A. Gave me a brief description.  
5 Q. What was the brief description of the case  
6 that he gave you?  
7 A. It was an arrest that was made in Grosse  
8 Pointe Farms. As a result of the investigation the  
9 officer did there was no evidence in regard to chemical  
10 tests that supported the arrest and wanted to know if I  
11 could review the case for him.  
12 Q. Did you review the case?  
13 A. Yes, I did.  
14 Q. What materials from the case did you review?  
15 A. He provided me with the Complaint Report from  
16 Grosse Pointe Farms Police. Chemical tests. The  
17 chemical test rights form. Two videos; one of the arrest  
18 process and one of the booking process.  
19 Q. Anything else he provided you with?  
20 A. That's what I was given.  
21 Q. Anything else since that initial provision of  
22 these materials that you have been provided?  
23 A. No.  
24 Q. Just so I'm clear. You have not read the  
25 testimony given by Mr. Thibault at his deposition?

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1 A. No.  
2 Q. That was taken in this very room when we  
3 didn't have the lights that we have available today?  
4 A. No, I did not.  
5 Q. Likewise, I'm assuming you didn't review  
6 Officer Wierszewski's deposition testimony?  
7 A. No, I did not.  
8 Q. Do you think that either the deposition  
9 testimony of Mr. Thibault or Mr. Wierszewski would be of  
10 importance to you to review prior to formulating  
11 opinions?  
12 A. No.  
13 Q. Did you review Mr. Thibault's Answers to  
14 Interrogatories?  
15 A. No.  
16 Q. Did you review Defendant Wierszewski's  
17 Answers to Interrogatories?  
18 A. No.  
19 Q. Did you review the City of Grosse Pointe  
20 Farms' Answers to Interrogatories?  
21 A. No.  
22 Q. Did you review Officer Wierszewski's Response  
23 to Request for Production of Documents?  
24 A. No.  
25 Q. Did you review the City of Grosse Pointe

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1 Farms' Answers to Request for Production of Documents?  
2 A. No.  
3 Q. Did you review any documents produced by  
4 Mr. Thibault?  
5 A. No.  
6 Q. I'm assuming but you tell me. Are you going  
7 to render opinions today --  
8 MR. DEGROOD: Off the record.  
9 (Brief recess.)  
10 MR. DEGROOD: Back on the record.  
11 (Record repeated by reporter.)  
12 Q. Are you prepared to render any opinions today  
13 critical of the City of Grosse Pointe Farms?  
14 A. Yes.  
15 Q. Are you prepared to render any opinions today  
16 critical of Officer Wierszewski?  
17 A. I'll render my observations and they can be  
18 interpreted as critical or not.  
19 Q. Excuse me?  
20 A. I'll render my observations and my opinion  
21 and they can be interpreted as critical or not.  
22 Q. Well, how do you interpret them? I would  
23 like to know if you're criticizing Officer Wierszewski?  
24 A. No. I think that's a harsh word. I think I  
25 will render my observations as to what I see.

BUGBEE Page 24

1 Q. Well, let me ask you this. Do you believe  
2 that Officer Wierszewski at any time with his interaction  
3 with Mr. Thibault on December 5th, 2014, violated any  
4 standard of practice that a reasonable and prudent  
5 officer in like or similar circumstances with like and  
6 similar training of Officer Wierszewski?  
7 A. Yes.  
8 Q. What's the next item that you brought with  
9 you?  
10 A. This is something I referred to, as the  
11 temperature that day was a factor in what I reviewed. I  
12 researched the National Weather Service.  
13 Q. For what city?  
14 A. Temperature for that day. For Detroit.  
15 Q. Do you know if those temps are taken at Metro  
16 Airport?  
17 A. This is likely taken at DTX. That's Detroit  
18 City Airport.  
19 Q. How far was that from the stop?  
20 A. This is Detroit City. I'm a pilot so I'm  
21 familiar with this.  
22 Q. I understand. I read your C.V. But this  
23 case doesn't involve any flying, does it?  
24 A. I have a familiarity where City Airport is.  
25 I'm just qualifying my capability.



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| 1 Q. How far was the City Airport from the stop?             |         | 1 the field sobriety testing given to Mr. Thibault?             |         |
| 2 A. 6 miles. 7 miles.                                       |         | 2 A. No.  |         |
| 3 Q. 7 miles?  |         | 3 Q. Do you have any plans today or from today                  |         |
| 4 A. Yeah.   |         | 4 forward to review Officer Wierszewski's deposition            |         |
| 5 Q. What was the temperature at City Airport at             |         | 5 testimony?  |         |
| 6 around two in the morning?                                 |         | 6 A. I have not been asked to or directed by                    |         |
| 7 A. It doesn't say. It says a minimum                       |         | 7 Counsel to do so and I don't have plans.                      |         |
| 8 temperature and a maximum temperature and an average       |         | 8 Q. Same question with respect to Mr. Thibault.                |         |
| 9 temperature.   |         | 9 A. I don't plan on that either.                               |         |
| 10 Q. Of what significance was the temperatures              |         | 10 MR. DEGROOD: I'm going to reserve                            |         |
| 11 with respect to your formulation of opinions?             |         | 11 the right to again examine Mr. Bugbee should there           |         |
| 12 A. Mr. Thibault said he was chilly.                       |         | 12 come a point in time that he does review those               |         |
| 13 Q. Pardon me?   |         | 13 materials for purposes of formulating or adding to           |         |
| 14 A. Mr. Thibault said he was chilly. He didn't             |         | 14 any of his opinions.   |         |
| 15 have a coat on. One of the observations for -- one of     |         | 15 I don't think we marked the                                  |         |
| 16 the pre-arrest observations that Officer Wierszewski made |         | 16 temperature. Let's do that next as No. 5.                    |         |
| 17 was that he kept rubbing his hands and moving his feet up |         | 17 (Deposition Exhibit No. 5 marked for                         |         |
| 18 and down.   |         | 18 identification.)   |         |
| 19 Q. Did you observe the videotape that recorded            |         | 19 Q. What's the next item that you brought with                |         |
| 20 the activities of the traffic stop at the scene where     |         | 20 you today?   |         |
| 21 Mr. Thibault rolled his sleeves up as he was walking back |         | 21 A. Those are my written notes that I took from               |         |
| 22 to the police cruiser at the direction of Officer         |         | 22 my most recent review of the second NHTSA manual that I      |         |
| 23 Wierszewski?  |         | 23 had mentioned that are in discovery. Those were prepared     |         |
| 24 A. Yes.   |         | 24 over the weekend.  |         |
| 25 Q. Do you think that may have had any role to             |         | 25 Q. May I see those, please.                                  |         |
| BUGBEE   | Page 26 | BUGBEE  | Page 28 |
| 1 play in his being chilly?                                  |         | 1 MR. DEGROOD: Let's do those.                                  |         |
| 2 A. Potentially.  |         | 2 (Deposition Exhibit No. 6 marked for                          |         |
| 3 Q. Do you agree that if indeed the evidence in             |         | 3 identification.)  |         |
| 4 this case indicates that Mr. Thibault was in the cab of a  |         | 4 Q. With respect to your notes of Exhibit No. 6,               |         |
| 5 semi-tractor with the heater on at the time of exiting     |         | 5 you have indicated on the first page: Notes pertaining        |         |
| 6 from the cab of that tractor, that more likely than not    |         | 6 to a phase one. On the second page, notes related to a        |         |
| 7 he was not impacted by the chilliness, if you will?        |         | 7 phase two, which continue on to page three. And on page       |         |
| 8 A. I don't know.   |         | 8 four a phase three, which is four, five, six, seven. And      |         |
| 9 Q. So that's a gray area with respect to                   |         | 9 then a validation of SFST at page eight and then              |         |
| 10 formulating your opinion. Correct?                        |         | 10 standardized WAT on page nine in one leg stand.              |         |
| 11 A. I don't know how he felt, no.                          |         | 11 It's my understanding that when NHTSA                        |         |
| 12 Q. You would agree that when it comes to                  |         | 12 explains the standardized field sobriety test that it breaks |         |
| 13 standard field sobriety testing, while the individuals    |         | 13 it into a three phase study, the first being the initial     |         |
| 14 learning said techniques are taught same under ideal      |         | 14 observations of vehicle operation. Correct?                  |         |
| 15 conditions, that when officers actually enter the field,  |         | 15 A. Correct.  |         |
| 16 there are times that less than ideal conditions exist     |         | 16 Q. And you're not critical of Officer                        |         |
| 17 with respect to administering those field sobriety tests. |         | 17 Wierszewski for stopping Mr. Thibault as a result of the     |         |
| 18 Correct?  |         | 18 erratic behavior -- those my terms -- of observing this      |         |
| 19 A. Correct. And those conditions need to be               |         | 19 semi tractor-trailer being driven over a median island       |         |
| 20 taken into consideration as to the interpretation of      |         | 20 separating the two directions of travel on Moross Avenue,    |         |
| 21 their weight.   |         | 21 are you?   |         |
| 22 Q. Do you have any evidence one way or the other          |         | 22 A. No.   |         |
| 23 that Officer Wierszewski did not take the temperature at  |         | 23 MR. RADNER: I want to just object                            |         |
| 24 the time of the traffic stop into consideration with      |         | 24 that that question had a -- it was a very lengthy I          |         |
| 25 respect to his performing and observing the response to   |         | 25 think at times vague question. To answer that with           |         |

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| <p>BUGBEE Page 29</p> <p>1 simply a yes or no I don't think is fair and<br/>2 appropriate.</p> <p>3 Q. Let me ask you this question as well. You<br/>4 don't believe that Mr. Thibault's constitutional rights<br/>5 were violated as a result of this traffic stop by Officer<br/>6 Wierszewski, do you?</p> <p>7 MR. RADNER: I'm going to object to<br/>8 that as well that I don't believe he's qualified to<br/>9 answer that question.</p> <p>10 MR. DEGROOD: I think for many years<br/>11 enforcing the laws, including the Constitution of<br/>12 the State of Michigan, as well as the Constitution<br/>13 of the United States, he may be capable of<br/>14 answering that question. If at a subsequent point<br/>15 in time you wish to file a Motion to strike his<br/>16 opinion concerning that, that is obviously your<br/>17 prerogative.</p> <p>18 Q. Do you remember the question, Mr. Bugbee?<br/>19 A. Yes. I don't know.<br/>20 Q. You don't know?<br/>21 A. I don't know.<br/>22 Q. Why don't you know?<br/>23 A. As Counsel had stated, I'm not qualified to<br/>24 make that.<br/>25 Q. Would I be correct that you're not qualified</p>  | <p>BUGBEE Page 31</p> <p>1 with respect to the observations of vehicle operation?<br/>2 A. Can I refer to the copy of my notes? I have<br/>3 my original.<br/>4 Q. You have your originals in there?<br/>5 A. Yes.<br/>6 MR. RADNER: These notes have not yet<br/>7 been marked, right?<br/>8 MR. DEGROOD: Yes. They're No. 6.<br/>9 MR. RADNER: I thought he was<br/>10 referring to the big stack of notes.<br/>11 A. I'm going to have to refer to the big stack<br/>12 of notes.<br/>13 MR. DEGROOD: Let's mark the big<br/>14 stack of notes. We'll mark that as Exhibit No. 7.<br/>15 (Deposition Exhibit No. 7 marked for<br/>16 identification.)<br/>17 Q. I'm going to hand you what has been marked as<br/>18 No. 7. What is that?<br/>19 A. This is my notes as to my observations of the<br/>20 videotape, videotapes that were provided to me in regard<br/>21 to the traffic stop and arrest process, as well as the<br/>22 booking process.<br/>23 Q. Okay.<br/>24 A. Prior to Mr. Thibault being taken out of the<br/>25 police department to get a blood test.</p>   |
| <p>BUGBEE Page 30</p> <p>1 to render any opinions whatsoever concerning the<br/>2 constitutionality of any of the activities that were<br/>3 performed by Officer Wierszewski with respect to his<br/>4 interaction with Mr. Alan Thibault on December 5th, 2014?<br/>5 A. I don't know how to answer that question<br/>6 either.<br/>7 Q. What do you mean you don't know how to answer<br/>8 it?<br/>9 A. It would be premature for me to make any kind<br/>10 of a determination as to the constitutionality of his<br/>11 actions because I'm simply not trained to do that.<br/>12 Q. So is there some type of training you believe<br/>13 could fall upon your lap, if you will, such that you<br/>14 could render such an opinion?<br/>15 A. Probably law school.<br/>16 Q. But short of that you're not comfortable in<br/>17 answering questions concerning constitutional violations<br/>18 in this lawsuit. Correct?<br/>19 A. Correct.<br/>20 Q. Now were there any phase one observations in<br/>21 your opinion made by Officer Wierszewski?<br/>22 A. Yes.<br/>23 Q. Did he fail in any manner whatsoever, in your<br/>24 opinion, to complete under the circumstances that were<br/>25 existing at the time of his observation and traffic stop</p> | <p>BUGBEE Page 32</p> <p>1 Q. With respect to Exhibit No. 6 that we<br/>2 previously marked, in my review of those notes and given<br/>3 your prior testimony, am I correct that the information<br/>4 contained in the nine pages of Exhibit 6 are statements<br/>5 that you retrieved from the NHTSA manual?<br/>6 A. Correct.<br/>7 Q. I notice that you did not write down any<br/>8 pages with respect to where the quotations from the NHTSA<br/>9 manual came from?<br/>10 A. No.<br/>11 Q. Any reason why not?<br/>12 A. I thought those were going to be used to just<br/>13 refresh my memory as I testified here. I didn't believe<br/>14 they were going to be used for reference for anybody<br/>15 else.<br/>16 Q. Did you actually procure the NHTSA standard<br/>17 manual in printed form or only in electronic format?<br/>18 A. Electronic format.<br/>19 Q. On your version of the electronic format, did<br/>20 you highlight any information contained within that<br/>21 manual?<br/>22 A. No. I made notes of the pertinent.<br/>23 Q. So if we were to look at the master manual we<br/>24 won't find any underscores, any highlighted, none of<br/>25 that?</p> |

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| <p>BUGBEE Page 33</p> <p>1 A. No.</p> <p>2 Q. Because you took what you felt was important</p> <p>3 from the manual and reproduced that in writing, which we</p> <p>4 have marked as Exhibit 6?</p> <p>5 A. Correct.</p> <p>6 Q. Now let me see. I'm going to have Exhibit 7.</p> <p>7 You have the original?</p> <p>8 A. I have the original.</p> <p>9 Q. Now I'm going to go back. You may use your</p> <p>10 notes, obviously. My question to you is: Are you in any</p> <p>11 fashion whatsoever going to render any opinion that</p> <p>12 Officer Wierszewski failed to exercise a phase one</p> <p>13 observation with respect to his stop of Mr. Thibault on</p> <p>14 12-5-14?</p> <p>15 A. No. But I don't think that he observed much</p> <p>16 driving. He saw it jumped the curb and the vehicle was</p> <p>17 stationary when he rolled up on it.</p> <p>18 Q. He had opportunity to drive down and adjacent</p> <p>19 to the vehicle and then to come up behind it. Correct?</p> <p>20 A. Correct.</p> <p>21 Q. You didn't review his deposition testimony to</p> <p>22 learn if indeed there were any other observations that he</p> <p>23 made that may not have been captured on that video.</p> <p>24 Correct?</p> <p>25 A. Correct.</p>   | <p>BUGBEE Page 35</p> <p>1 Q. Go ahead.</p> <p>2 A. I would like you to simplify the question</p> <p>3 because I got lost. I wanted to answer the first part of</p> <p>4 it and I got lost.</p> <p>5 Q. Are you suggesting that to comply with phase</p> <p>6 one observations that Officer Wierszewski should have</p> <p>7 directed this driver, Mr. Thibault, to continue driving</p> <p>8 the vehicle such that he, Officer Wierszewski, could have</p> <p>9 additional observational information regarding</p> <p>10 Mr. Thibault's operation of the truck?</p> <p>11 A. No.</p> <p>12 Q. Do you know how many officers observed Mr.</p> <p>13 Thibault's operation of the semi tractor-trailer on</p> <p>14 12-5-14?</p> <p>15 A. From the video it appeared to be Officer</p> <p>16 Wierszewski and Officer Cashion in two separate patrol</p> <p>17 cars.</p> <p>18 Q. So that would be two?</p> <p>19 A. Yes.</p> <p>20 Q. Now any other statements you would like to</p> <p>21 make with respect to a phase one observation, in addition</p> <p>22 to you would have liked to have seen more driving under</p> <p>23 these circumstances?</p> <p>24 A. Yes.</p> <p>25 Q. What would that be?</p>  |
| <p>BUGBEE Page 34</p> <p>1 Q. So is that a criticism, the fact that he only</p> <p>2 saw the vehicle move for the period that it did move and</p> <p>3 strike the island separating the lanes of travel?</p> <p>4 A. It's merely an observation.</p> <p>5 Q. Again, if you were an officer investigating</p> <p>6 the circumstances, you take the facts as they come your</p> <p>7 way. Correct?</p> <p>8 A. I myself would have wanted to see more</p> <p>9 driving prior to making that determination.</p> <p>10 Q. Well, are you aware of the fact that</p> <p>11 Mr. Thibault has testified in this matter that as soon as</p> <p>12 he saw the police officers he stopped his vehicle,</p> <p>13 believing that he would be pulled over?</p> <p>14 A. No.</p> <p>15 Q. If that were the case then how in God's green</p> <p>16 earth could any officer, including Officer Wierszewski,</p> <p>17 have seen more driving?</p> <p>18 Are you suggesting he should have gone</p> <p>19 to the driver of this semi tractor-trailer, after observing</p> <p>20 it jump the curb, if you will, and ask him to drive a</p> <p>21 quarter mile so I can watch your activity behind the wheel?</p> <p>22 MR. RADNER: I'm going to object.</p> <p>23 It's a compound question. It's calls for</p> <p>24 speculation.</p> <p>25 You can answer, if you can.</p> | <p>BUGBEE Page 36</p> <p>1 A. I believe in the officer's report he</p> <p>2 indicated that the truck was stationary at the</p> <p>3 intersection with its four way flashers flashing.</p> <p>4 However, when I reviewed the video it was clear that from</p> <p>5 the system that they have that, the four way or -- excuse</p> <p>6 me -- the patrol car lights were activated at 1:48 and 21</p> <p>7 seconds a.m., which initiates the traffic stop. The semi</p> <p>8 four ways didn't become active for another seven seconds,</p> <p>9 which tells me that the driver of the vehicle was</p> <p>10 responding to the signal from the officer to pull over or</p> <p>11 he was being stopped.</p> <p>12 Q. All right.</p> <p>13 A. That tells me a lot about his capability to</p> <p>14 negotiate what is going on around him and to change his</p> <p>15 task from driving the vehicle to now complying with the</p> <p>16 officer's request for him to pull over basically.</p> <p>17 Q. In your review of the video of the stop did</p> <p>18 you at any point in time see the semi tractor-trailer</p> <p>19 moving?</p> <p>20 A. I saw it stationary at the corner of Moross</p> <p>21 and Mack with the left turn signal. Looked like he was</p> <p>22 waiting for the light to turn. So he was operating the</p> <p>23 vehicle in the left lane of traffic.</p> <p>24 Q. My question was: Did you at any time see</p> <p>25 movement of the tractor-trailer on the video: Yes or no?</p> |

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1 A. No, I did not.  
2 Q. Any other criticisms of Officer Wierszewski  
3 with respect to his phase one observations?  
4 A. He had said there was a -- when Officer  
5 Wierszewski approached the driver or talked to him at  
6 some point, he said that his trailer clearance lights  
7 were out. But it appeared that from the video that the  
8 clearance lights were operative.  
9 Q. Were you able to see -- well, strike that.  
10 First off, as a Michigan State Police  
11 Officer, did you ever receive any specialized training in  
12 commercial vehicle inspections?  
13 A. Yes.  
14 Q. Were you ever involved in the Motor Carrier  
15 Division of the Michigan State Police?  
16 A. No. But we were trained to motor carrier  
17 standards in the Basic Academy.  
18 Q. You would agree that the video that you saw  
19 did not provide any observational abilities of any of the  
20 clearance lights on the front of that trailer. Correct?  
21 A. Correct.  
22 Q. So you don't know, not having read Officer  
23 Wierszewski's deposition, which of the clearance lights  
24 that he was referring to. Correct?  
25 A. Correct.

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1 Q. So the fact that you saw operational clearing  
2 lights on the rear of this trailer does not rule out the  
3 fact that lights on the front of the trailer were  
4 inoperable. Correct?  
5 A. Correct. I was basing it on my observation.  
6 Q. So you wouldn't be critical of Officer  
7 Wierszewski with respect to his observation of a  
8 clearance lamp not working, if indeed it were his  
9 testimony it was on the front of the trailer. Correct?  
10 A. Correct.  
11 Q. What about the license plate lamp, was that  
12 operable or couldn't you tell?  
13 A. Couldn't tell.  
14 Q. Anything else that you are critical of  
15 Officer Wierszewski with respect to what he had to work  
16 with for a phase one observation of this scenario as per  
17 the NHTSA standard field sobriety testing training?  
18 A. I'm not critical of his stop but I don't  
19 think it provided indications of intoxicated driving.  
20 Q. What did it provide?  
21 A. It provided indication of a civil infraction,  
22 perhaps improper lane use. That was it.  
23 Q. Well, do you have any basis upon which to  
24 conclude that at any time before Officer Wierszewski  
25 moved on to a phase two or phase three observation, had

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1 formulated any opinion with respect to Mr. Thibault  
2 operating under the influence of alcohol or drugs?  
3 A. I don't know how he formed his opinion.  
4 Q. It would be important to know what of a phase  
5 one, phase two and/or phase three observation an officer  
6 utilizes in determining to arrest someone for OWI.  
7 Correct?  
8 A. Could you rephrase that.  
9 MR. DEGROOD: Could you read that  
10 back to him, please.  
11 (Record repeated.)  
12 Q. That would be important?  
13 MR. RADNER: I'm just going to  
14 object. Important for what.  
15 Q. Important if possible, correct?  
16 A. If possible.  
17 Q. What do you mean by that?  
18 A. It's kind of a vague question.  
19 Q. Anything else that you're critical of with  
20 respect to the phase one portion of this stop?  
21 A. No.  
22 Q. What is the phase two portion of the NHTSA  
23 training for standard field sobriety testing?  
24 A. Contact with the driver.  
25 Q. Did Officer Wierszewski have any involvement

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1 in personal contact with Mr. Thibault?  
2 A. Yes.  
3 Q. Are you at any point in time offering any  
4 opinions that Officer Wierszewski failed to complete a  
5 phase two portion of his examination of Mr. Thibault?  
6 A. I think he completed the examination.  
7 Q. Did he complete the phase two examination in  
8 keeping with the standards expected of him as a  
9 reasonable and prudent public safety officer under the  
10 circumstances as they existed on December 5th, 2014?  
11 A. Yes.  
12 Q. What is the phase three portion of the NHTSA  
13 training?  
14 A. It's the standard field sobriety tests.  
15 Q. How many standard field sobriety tests are  
16 there that are recognized within the battery of available  
17 standard field sobriety tests?  
18 A. There are three scientifically validated  
19 tests.  
20 Q. Those are?  
21 A. The horizontal gaze nystagmus. The walk and  
22 turn and the one leg stand.  
23 Q. Would I be correct that as a field training  
24 officer, when you were so engaged and employed with the  
25 Michigan State Police, that you would have instructed



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| <p>BUGBEE Page 41</p> <p>1 those officers training in the field with you to</p> <p>2 additional field sobriety testing over and above those</p> <p>3 three. Yes or no?</p> <p>4 A. Yes.</p> <p>5 Q. What additional field sobriety testing, over</p> <p>6 and above the three that you have described, would you</p> <p>7 instruct your fellow officers that were within your</p> <p>8 charge as an FTO?</p> <p>9 A. There are other non validated tests which can</p> <p>10 be used.</p> <p>11 Q. Which ones would you have trained individuals</p> <p>12 in? And by the way, when you say: Validated versus non</p> <p>13 validated, what do you mean by that?</p> <p>14 A. Well, through NHTSA standards there are only</p> <p>15 three scientifically validated tests which would be used</p> <p>16 to make the arrest decision. Those are the three</p> <p>17 aforementioned tests that I said.</p> <p>18 Q. When you say "validated" how are they</p> <p>19 validated, if you know?</p> <p>20 A. They were scientifically validated through</p> <p>21 studies in the eighties.</p> <p>22 Q. Were you involved in any of those studies?</p> <p>23 A. No.</p> <p>24 Q. Have you reviewed the results of any of those</p> <p>25 studies?</p>  | <p>BUGBEE Page 43</p> <p>1 have probable cause to arrest someone for OWI in advance</p> <p>2 of the results of blood tests for alcohol becoming</p> <p>3 available for that officer. Correct?</p> <p>4 A. Yes.</p> <p>5 Q. In fact, when you were pulling people over as</p> <p>6 a Michigan State Police Officer or Trooper, were there</p> <p>7 times that you needed to have blood drawn?</p> <p>8 A. Yes.</p> <p>9 Q. It's my understanding when that occurred the</p> <p>10 blood sample was not immediately analyzed and more likely</p> <p>11 than not was not analyzed even within 48 to 72 hours of</p> <p>12 the arrest. Correct?</p> <p>13 A. Correct.</p> <p>14 Q. Your blood samples, I'm assuming, like the</p> <p>15 sample drawn on Mr. Thibault would go to the Michigan</p> <p>16 State Police Crime Lab. Correct?</p> <p>17 A. Yes.</p> <p>18 Q. Likewise, would you agree that an officer</p> <p>19 could make an arrest of somebody for OWI with probable</p> <p>20 cause, even though a blood sample for drugs that had been</p> <p>21 removed had not yet had the findings returned?</p> <p>22 A. Correct.</p> <p>23 Q. Did you review any of the laboratory reports</p> <p>24 generated in this case with respect to blood samples</p> <p>25 removed from Mr. Thibault?</p> |
| <p>BUGBEE Page 42</p> <p>1 A. No.</p> <p>2 Q. Your familiarity with the alleged validation</p> <p>3 is basically through the statements that NHTSA makes in</p> <p>4 its manuals. Correct?</p> <p>5 A. Through my training and the alcohol</p> <p>6 enforcement, the standard field sobriety testing courses</p> <p>7 I have taken such that those were all covered. There</p> <p>8 were segments that talked about the scientific studies</p> <p>9 that were done.</p> <p>10 Q. Did you at any point in time in your career</p> <p>11 as a Michigan State Police Officer, ever arrest a subject</p> <p>12 that you believed was operating under the influence but</p> <p>13 at or near the time of arrest had a negative PBT that you</p> <p>14 subsequently had blood samples drawn that ultimately came</p> <p>15 back negative for alcohol and negative for drugs even</p> <p>16 though you had arrested the individual for OWI?</p> <p>17 A. Not that I recall.</p> <p>18 Q. But you haven't gone back and looked at all</p> <p>19 of your stops, have you?</p> <p>20 A. No.</p> <p>21 Q. You would agree that indeed an officer may</p> <p>22 have probable cause to arrest someone for OWI who has</p> <p>23 blown negative or zero results on a PBT. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. You likewise understand that an officer may</p> | <p>BUGBEE Page 44</p> <p>1 A. Yes.</p> <p>2 Q. Which ones?</p> <p>3 A. They were provided to me as part of the</p> <p>4 Complaint Report that I talked about from the --</p> <p>5 Q. Could I see what you're referring to as the</p> <p>6 Complaint Report?</p> <p>7 A. This is listed as Grosse Pointe Farms Public</p> <p>8 Safety Complaint report No. 140005021. Happened 12-5 of</p> <p>9 2014, by Officer Wierszewski.</p> <p>10 Q. Did you make a copy of that to give to me as</p> <p>11 a result of the Notice to Produce?</p> <p>12 A. I believe that's on the disc that I gave you.</p> <p>13 Q. You just put together that report in its</p> <p>14 entirety from your original that I might quickly review.</p> <p>15 A. Pardon me?</p> <p>16 Q. May I see what you're calling the compendium</p> <p>17 of the report. You just put it together.</p> <p>18 MR. DEGROOD: Solomon, he can do it.</p> <p>19 MR. RADNER: I'm just looking at what</p> <p>20 he's doing.</p> <p>21 MR. DEGROOD: Slipping the Joker in</p> <p>22 the deck, are you?</p> <p>23 MR. RADNER: The record should be</p> <p>24 very clear that I have not touched the documents.</p> <p>25 I'm merely looking over his shoulder.</p>  |



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| <p>BUGBEE Page 45</p> <p>1 A. Would you like me to state for the record<br/>2 what is in here?<br/>3 Q. If you could just hand it to me when you have<br/>4 got it all put together. I'll even let you borrow a<br/>5 paperclip if you would like.<br/>6 A. Okay. I'm handing to you what was given to<br/>7 me by Counsel and stated to be the Police Report.<br/>8 Q. Thank you.<br/>9 A. Containing the aforementioned or afore<br/>10 requested -- if that's a word -- chemical test results.<br/>11 MR. DEGROOD: Let's mark this as an<br/>12 Exhibit and count the pages, please.<br/>13 (Deposition Exhibit No. 8 marked for<br/>14 identification.)<br/>15 Q. I'm going to show you what we have marked as<br/>16 Exhibit 8 to your deposition. There are 17 pages.<br/>17 Specifically I want to go through the laboratory results.<br/>18 A. Yes.<br/>19 Q. First off, when was this report authored to<br/>20 the best of your knowledge?<br/>21 A. Well, it says a report date and time 12-5 of<br/>22 '14 at 2:19 p.m. That doesn't tell me when it was<br/>23 authored though.<br/>24 Q. All right.<br/>25 A. Excuse me. Stop.</p> | <p>BUGBEE Page 47</p> <p>1 Grosse Pointe Farms Police Report?<br/>2 A. No. These were provided to me as well as the<br/>3 report by Counsel.<br/>4 Q. These were what? What are these the labs<br/>5 from?<br/>6 A. Those look like a private test that was<br/>7 sought by Mr. Thibault.<br/>8 Q. You didn't read his deposition though,<br/>9 correct?<br/>10 A. No, I didn't.<br/>11 Q. Now did you ever receive the laboratory<br/>12 report from the Michigan State Police relative to an<br/>13 alcohol study performed by the Department of State Police<br/>14 Forensic Science?<br/>15 A. That's not in this information, no.<br/>16 Q. The lab report that clearly is a copy of the<br/>17 State of Michigan, Department of State Police is related<br/>18 to a blood sample that relates to whether or not drugs<br/>19 were included. Correct?<br/>20 A. Well, I don't know what they tested for but<br/>21 they say what the results are.<br/>22 Q. And they show that they didn't find the drugs<br/>23 that are specifically identified in the document.<br/>24 Correct?<br/>25 A. It says item number one not detected and it</p>   |
| <p>BUGBEE Page 46</p> <p>1 Q. Go ahead.<br/>2 A. Created on -- now this date here on the<br/>3 bottom of page two of four states it was created on<br/>4 12-19, 2014 at 2:09 p.m.<br/>5 Q. Do you know if that's just the time that the<br/>6 copy that we have marked was made at the time as opposed<br/>7 to the actual creation of same?<br/>8 A. I don't know.<br/>9 Q. We do know from your review of Exhibit No. 8,<br/>10 that the blood samples were drawn on 12-5, 2014.<br/>11 Correct?<br/>12 A. Yes. Well, that would not be on this sheet.<br/>13 It would be on another sheet.<br/>14 Q. It clearly would be on --<br/>15 A. That would be on this one. This is the one<br/>16 the officer would have to fill out and that says 12-5 of<br/>17 '14.<br/>18 Q. The date of collection, right?<br/>19 A. Right.<br/>20 Q. Now there are two pages in here.<br/>21 A. Yes.<br/>22 Q. That are Specimen Result Certificate.<br/>23 Attention: Kacey Hothem.<br/>24 A. Uh-huh.<br/>25 Q. You believe these are part of the actual</p>  | <p>BUGBEE Page 48</p> <p>1 shows a whole list of drugs that were not detected.<br/>2 Q. Correct. Now you're not a toxicologist,<br/>3 correct?<br/>4 A. No, I am not.<br/>5 Q. I'm assuming you have already told me you<br/>6 didn't have any training as a drug recognition expert.<br/>7 Correct?<br/>8 A. Correct.<br/>9 Q. Would I also be correct that you have<br/>10 received no training with respect to what particular<br/>11 designer drugs may have been utilized by the public in<br/>12 December of 2014. Is that fair enough?<br/>13 A. That's not a yes or a no question. I<br/>14 received extensive training in basic and advanced<br/>15 narcotics with the Michigan State Police as to the<br/>16 existence and effects of many types of drugs.<br/>17 Q. In that training you're aware of the fact<br/>18 that some of these -- I'll use the term designer drugs --<br/>19 metabolize out of an individual's system even before a<br/>20 blood sample can be retrieved, correct?<br/>21 A. I don't know.<br/>22 Q. That's beyond your expertise?<br/>23 A. I would have to review my past training<br/>24 materials and such to prepare for that question. I don't<br/>25 know which ones would, to render a definitive answer.</p> |

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| BUGBEE   | Page 49 | BUGBEE   | Page 51 |
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| 1 Q. I'm just asking, not specifically but in a              |         | 1 A. No.   |         |
| 2 general sense, you are aware of the fact that some drugs   |         | 2 Q. Is there any aspect of the three standardized           |         |
| 3 can metabolize out of someone's system before a blood      |         | 3 tests that you believe were not appropriately              |         |
| 4 sample is even retrieved?                                  |         | 4 administered by Mr. Wierszewski?                           |         |
| 5 A. No. I'm not aware of that.                              |         | 5 A. Yes.  |         |
| 6 Q. Are you aware of the fact that some drugs can           |         | 6 Q. Let's start with the walk and turn. Was that            |         |
| 7 metabolize out of a blood sample that is merely sitting    |         | 7 properly administered?                                     |         |
| 8 in a vial waiting to be tested?                            |         | 8 A. It was properly administered.                           |         |
| 9 A. No.   |         | 9 Q. It was?   |         |
| 10 Q. That's beyond your training?                           |         | 10 A. Yes.   |         |
| 11 A. No. It may have been -- it was certainly               |         | 11 Q. On how many occasions?                                 |         |
| 12 within my training I'm willing to say but as far as if I  |         | 12 A. Two that I saw.  |         |
| 13 remember that part of it, no. I don't remember that.      |         | 13 Q. Where were they, the ones that you saw, where          |         |
| 14 Q. So as you sit here today you're not rendering          |         | 14 were they occurring?                                      |         |
| 15 any opinions on that topic?                               |         | 15 A. There were two that were administered on the           |         |
| 16 A. Correct.   |         | 16 road.   |         |
| 17 Q. Now let's go back to our face three, which is          |         | 17 Q. At the stop?   |         |
| 18 what, pre-arrest training and screening?                  |         | 18 A. Yes.   |         |
| 19 A. Correct.   |         | 19 Q. Do you believe either of those -- let's talk           |         |
| 20 Q. Now with respect to the phase three                    |         | 20 about the first one. The first one that was administered  |         |
| 21 pre-arrest screening of the NHTSA training, are you in    |         | 21 was witnessed, to your knowledge, by how many officers of |         |
| 22 any way critical of Officer Wierszewski's performance of  |         | 22 Grosse Pointe Farms?                                      |         |
| 23 any pre-arrest screening?                                 |         | 23 A. Two.   |         |
| 24 A. I don't believe they provided probable cause           |         | 24 Q. Which two?   |         |
| 25 to make the arrest.                                       |         | 25 A. Based on just what was going on in the video           |         |
| BUGBEE   | Page 50 | BUGBEE   | Page 52 |
| 1 Q. So it is your opinion that in your judgment             |         | 1 I think it was Officer Wierszewski and Officer Cashion.    |         |
| 2 what you saw with respect to these three scientifically    |         | 2 She was continually referred to as Veronica. So I          |         |
| 3 discussed and verified standardized field sobriety tests,  |         | 3 presume that's her.  |         |
| 4 in your opinion it didn't provide probable cause,          |         | 4 Q. By the way, you did review the drug                     |         |
| 5 correct?   |         | 5 evaluation form that was completed by Officer              |         |
| 6 MR. RADNER: I'm just going to object                       |         | 6 Wierszewski, correct?                                      |         |
| 7 to that question that there was a lot more in the          |         | 7 A. Yes.  |         |
| 8 video than just those three scientific tests. But          |         | 8 Q. Am I correct that at no time during your                |         |
| 9 if you understood the question and you can answer          |         | 9 professional activities did you ever complete those types  |         |
| 10 it with a yes or a no, please feel free.                  |         | 10 of tests and fill out that type of a form?                |         |
| 11 A. Can you ask the question again, please.                |         | 11 A. We filled out those types of a form.                   |         |
| 12 Q. Sure. First off, what field sobriety tests             |         | 12 Q. Those exact forms?                                     |         |
| 13 in your opinion were performed if any that provided       |         | 13 A. Not that exact form. That type of form that            |         |
| 14 probable cause of operation OWI by Mr. Thibault on the    |         | 14 documented our observations in the standard field         |         |
| 15 day in question?  |         | 15 sobriety testing.   |         |
| 16 A. In my observation it's my opinion none of the          |         | 16 Q. Did you ever take blood pressure of subjects?          |         |
| 17 tests -- which include the three standardized tests as    |         | 17 Yes or no.  |         |
| 18 well as all the additional tests that he gave him -- rose |         | 18 A. No.  |         |
| 19 to the level of probable cause to make an arrest.         |         | 19 Q. Did you ever take temperatures of subjects?            |         |
| 20 Q. You weren't there that evening, correct?               |         | 20 Yes or no?  |         |
| 21 A. No. This is based on an observation of the             |         | 21 A. No.  |         |
| 22 video. Yes.   |         | 22 Q. Did you ever complete any eye examinations in          |         |
| 23 Q. Did you see all of the testing that was                |         | 23 addition to the vertical or horizontal gaze nystagmus     |         |
| 24 performed upon Mr. Thibault at the station that may not   |         | 24 test: Yes or no?  |         |
| 25 have been captured on any video? Yes or no?               |         | 25 A. Yes.   |         |

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1 Q. Which ones did you complete besides that?  
2 A. Pupil size.  
3 Q. What other tests are recorded on the DRE form  
4 completed by Officer Wierszewski -- and, please, you may  
5 refer to it -- that you would not have completed in your  
6 analysis of a subject that you were evaluating for  
7 possible arrests of OWI?  
8 A. We never did pulse and time.  
9 Q. All right?  
10 A. We never did convergence. Never did the  
11 internal clock test. The forms that we filled out didn't  
12 have a section for nasal area, however, had that  
13 observation been made it would have been put in a report.  
14 Rebound dilation was a part of the horizontal gaze  
15 nystagmus training examination. Reaction to light was  
16 not.  
17 Forms I used didn't have a diagram to  
18 mark their arms. This one has a right arm and a left arm.  
19 It didn't have it. We didn't take their blood pressure. We  
20 didn't do their temperature. If things like muscle tone  
21 were pronounced enough to notice, we would have documented  
22 that in a narrative. That's the only examinations that are  
23 on this form, that were not examined in the past that I  
24 recall.  
25 Q. Okay. Were you trained to observe and make

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1 conclusions with respect to whether or not a subject was  
2 under the effects of a central nervous system stimulant?  
3 A. Yes. The training I went through covered  
4 that.  
5 Q. What stimulants would you look for and what  
6 were the -- strike that.  
7 What were the CNS symptoms that would  
8 lead you to believe that a subject was under the influence  
9 of a stimulant?  
10 A. Well first, presence of drugs or drug  
11 paraphernalia during the phase two. In general, if they  
12 were to pass the three validated tests, that being the  
13 horizontal gaze nystagmus, the walk and turn and the one  
14 leg stand. If their pupils were an uneven size and they  
15 also had vertical gaze nystagmus that may indicate some  
16 drug use.  
17 Q. Stimulant versus a depressant?  
18 A. What about it?  
19 Q. Well, I'm asking you what you look for to  
20 determine if someone is potentially under the influence  
21 of a CNS stimulant versus a CNS depressant, if you know?  
22 A. Within the scope of my background and  
23 training, having not gone through the drug recognition,  
24 we would have recognized a potential presence of some  
25 drugs and moved on from there.

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1 Q. All right. The vertical gaze nystagmus is  
2 not one of the scientifically verified tests?  
3 A. No, it's not.  
4 Q. Now did you record in your notes the time on  
5 the tape that you believe depict Mr. Tibault's efforts at  
6 completing the first walk and turn?  
7 A. Yes.  
8 Q. On what page of your notes is this?  
9 A. Page four.  
10 Q. Page four?  
11 A. Yes.  
12 Q. That would be what we have marked as  
13 Exhibit 7, correct?  
14 A. Yes.  
15 Q. The four is circled in the upper right hand  
16 corner. Correct?  
17 A. Yes.  
18 Q. What was the time on the tape that you have  
19 indicated the first walk and turn was attempted by the  
20 plaintiff?  
21 A. 1:53 and 25 seconds a.m. That was when the  
22 instructions were began.  
23 Q. I think you told me that the administration  
24 of that test by Officer Wierszewski was proper, correct?  
25 A. Yes.

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1 Q. Did you see any indication on your review of  
2 Mr. Thibault's first walk and turn that indicated he was  
3 unsteady and using his arms for balance?  
4 A. Yes.  
5 Q. Is that an indication of possible influence  
6 by alcohol or drugs with respect to the walk and turn?  
7 A. Yes.  
8 Q. Did you see any evidence, physical evidence,  
9 during the first Thibault walk and turn that we're  
10 talking about that suggested to you that Mr. Thibault was  
11 under the influence of alcohol or drugs?  
12 A. No.  
13 Q. None?  
14 A. None. Not in my opinion.  
15 Q. You would agree that other individuals could  
16 clearly differ with your opinion, correct?  
17 MR. RADNER: Objection. Speculation.  
18 Q. Go ahead.  
19 A. Others could.  
20 Q. Have you shown this video footage that we're  
21 discussing to any other actively employed officers,  
22 either Michigan State Police or other certified law  
23 enforcement officers, and requested their opinion as to  
24 whether it is demonstrative or not of someone impaired?  
25 A. No.

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1 Q. What did you see during this first walk and  
2 turn that lead you to believe and conclude no probable  
3 cause existed to suspect impaired individual?  
4 A. Well, during the instruction phase Mr.  
5 Thibault was very steady. He maintained the position  
6 that the officer asked him to while he was giving  
7 instructions. Okay. As he performed the test, though he  
8 did use his arm to balance, it didn't appear as though he  
9 stepped off the line.  
10 He did the proper amount of steps, which  
11 indicated that he had understood the questions, recalled  
12 them correctly and executed it properly. He did a good turn  
13 without losing control there and walked back. So in all,  
14 the only thing I saw him do which may raise some suspicion  
15 was he raised his arms above six inches to maintain his  
16 balance.  
17 Q. Did he maintain an upright position of his  
18 upper trunk as he completed the walk and turn we are  
19 discussing?  
20 A. At one point it seems as though he lost his  
21 balance but did not step off the line.  
22 Q. Were you able to see his feet in the video  
23 that was provided to you: Yes or no?  
24 A. No.  
25 Q. All right. So when he appeared to lose his

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1 balance you cannot objectively state that he did or did  
2 not come off the line. True?  
3 A. It appeared as though he stayed on the line  
4 to me.  
5 Q. You cannot objectively state -- because you  
6 were not present -- that he did or did not come off the  
7 line. Correct?  
8 A. Correct.  
9 MR. RADNER: Asked and answered.  
10 Q. You would agree that Officer Wierszewski and  
11 Officer Cashion would be in a better vantage point being  
12 at the scene to determine if indeed at any time during  
13 the first walk and turn Mr. Thibault came off the line.  
14 True?  
15 A. True.  
16 Q. Any other comments that you have with respect  
17 to his first walk and turn?  
18 A. Yes.  
19 Q. What would that be?  
20 A. I would have evaluated that as a pass or a  
21 good test. I would not have felt that was a fail based  
22 on my observations.  
23 Q. All right. Anything else that you wish to  
24 comment on that first walk and turn?  
25 A. No.

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1 Q. Now -- do you need a break?  
2 A. Bathroom.  
3 MR. DEGROOD: Let's go off the  
4 record. We'll take a break.  
5 (Brief recess.)  
6 Q. How many one leg stands did you observe on  
7 the videos that you watched?  
8 A. I observed one.  
9 Q. In your notes do you have the notation as to  
10 the time on the tape it occurred?  
11 A. Yes. 1:55 and 06 seconds a.m.  
12 Q. It's on page four as well?  
13 A. Four, yes.  
14 Q. Did you believe that you saw anything during  
15 the performance of that test that lead you to believe it  
16 was administered inappropriately?  
17 A. No.  
18 Q. Did you find anything during that test that  
19 lead you to believe possibly probable cause existed that  
20 this individual was impaired?  
21 A. No.  
22 Q. What during this test lead you to believe  
23 that this individual was not impaired?  
24 A. Well, during the two phases of the test, the  
25 instruction phase and the performance phase. During the

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1 instruction phase Mr. Thibault was instructed to stand in  
2 a certain position. Take that position until instructed  
3 to perform the test. He did so as instructed. I think  
4 he had to move to do it from his back to the camera to  
5 side to the camera and he was -- he followed instructions  
6 well.  
7 There was no confusion. When he was  
8 standing in that position listening to the instructions he  
9 maintained the position. No swaying. No difficulty. He  
10 paid attention to the instructions. When told to do the  
11 test -- let me correct that.  
12 There was one thing that Officer  
13 Wierszewski did do. He stopped observing Mr. Thibault for a  
14 moment. He returned to the patrol car. Then came back. So  
15 his observation stopped for a moment. At 1:55 and 53  
16 seconds he instructed him to move to a different position.  
17 He resumed another position which was --  
18 could be more favorable to the camera. He followed the  
19 instructions well. There was no swaying and looked like he  
20 had good balance as he listened to the instructions.  
21 Q. Okay.  
22 A. At 1:56 and 59 seconds, Officer Wierszewski  
23 instructed Mr. Thibault to start the test. Instructed  
24 him to lift his foot higher than six inches at one point  
25 it appeared. He left him in that position for what was a



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| <p>BUGBEE Page 61</p> <p>1 35 count. That was Mr. Thibault counting, which<br/>2 according to the tape was actually 24 seconds. At 1:56<br/>3 and 35 seconds he instructed Mr. Thibault to put his<br/>4 foot down.<br/>5 My observations was that the test was<br/>6 done properly. He had slight raising of the arms for<br/>7 balance. Proper count. And the tempo was good. There was<br/>8 no slurred speech as he was speaking and counting out. He<br/>9 had no loss of balance. He was able to complete the test<br/>10 without putting his foot to the ground.<br/>11 Q. Anything else with respect to the one leg<br/>12 stand?<br/>13 A. Like I said, at one point it appears as<br/>14 though he instructed him to lift his leg higher than<br/>15 six inches. He kept telling him: Higher, higher,<br/>16 higher, which put Mr. Thibault in a difficult position to<br/>17 maintain his balance.<br/>18 Q. Would you agree that when he was instructed,<br/>19 Mr. Thibault that is, to raise his foot higher, the<br/>20 camera did not allow the viewer of the video to actually<br/>21 see how high the foot was?<br/>22 A. Correct. But the position of the knee and<br/>23 the lower leg appeared though it was higher than the<br/>24 six inches.<br/>25 Q. Do you know how tall he was?</p> | <p>BUGBEE Page 63</p> <p>1 returned to the alphabet again and had him do the<br/>2 alphabet. So it wasn't performed twice but it was broken<br/>3 because it was mixed in with the numbers test.<br/>4 Q. Did he successfully complete the numbers<br/>5 test?<br/>6 A. He successfully completed the numbers test.<br/>7 Q. That test is the test where he was asked to<br/>8 pick a number between 19 and 21?<br/>9 A. Well, my observations of that were he<br/>10 followed the instructions well. There was no confusion<br/>11 as to what was being asked. There was no slurred speech.<br/>12 He gave a proper answer.<br/>13 Q. Did he successfully complete the alphabet<br/>14 test?<br/>15 A. It appears as though he was confused about<br/>16 the -- what was being asked of him. But it was broken<br/>17 down into two sections between the -- at 1:52 and 21<br/>18 seconds, Officer Wierszewski asked him if he knows his<br/>19 alphabet from A to Z. He responded yes.<br/>20 Q. Where was he standing when that question was<br/>21 asked of him?<br/>22 A. He was standing in front of the patrol car<br/>23 right in front of the camera. At that point he was asked<br/>24 to turn and face the truck.<br/>25 Q. Do you recall if he was asked if he knew the</p> |
| <p>BUGBEE Page 62</p> <p>1 A. No.<br/>2 Q. Would you agree that Officer Wierszewski and<br/>3 Officer Cashion would be in a better vantage point to<br/>4 determine if indeed he was requested to lift his knee<br/>5 only six inches and upon failing to do so, was instructed<br/>6 to attempt to return to six inches?<br/>7 A. They would be in a better vantage point to<br/>8 observe that.<br/>9 Q. In addition to the three standardized field<br/>10 sobriety tests that you have identified, what additional<br/>11 sobriety, field sobriety tests were administered?<br/>12 A. There were many.<br/>13 MR. RADNER: Are we still on the one<br/>14 leg stand or are we moving on?<br/>15 MR. DEGROOD: We're talking about<br/>16 what other tests were administered over and above<br/>17 the three standardized field sobriety tests.<br/>18 A. It appears as though there were four<br/>19 additional tests given. Some of them were given more<br/>20 than once.<br/>21 Q. Which were they?<br/>22 A. The alphabet was given twice. Or actually he<br/>23 started the instructions for the alphabet. Officer<br/>24 Wierszewski started the instructions for the alphabet and<br/>25 then he had him take the numbers test and then he</p>   | <p>BUGBEE Page 64</p> <p>1 alphabet when he was standing outside the cab to the<br/>2 semi-truck?<br/>3 A. That's what I'm talking about right now. He<br/>4 was --<br/>5 Q. So he was not directly in front of the hood,<br/>6 if you will, of Officer Wierszewski's car when he was<br/>7 asked if he knew the alphabet. Correct?<br/>8 A. He was through -- at this particular test<br/>9 this time, he was asked at 1:52 and 21. He was standing<br/>10 in front of the patrol car with his face to the patrol<br/>11 car. After he was asked if he knew the alphabet he was<br/>12 asked to turn and face the truck. I notice he made the<br/>13 turn, 180-degree turn, steady. Followed instructions<br/>14 well. No swaying. No staggering. So that's what I<br/>15 observed.<br/>16 Q. All right. Do you remember what he was<br/>17 subsequently instructed with respect to the alphabet<br/>18 test?<br/>19 A. Yes. At 1:52 and 42 seconds, after having<br/>20 successfully completed the numbers test, Officer<br/>21 Wierszewski then returned to the alphabet test and told<br/>22 him to recite the alphabet, starting with D and ending<br/>23 with O.<br/>24 Q. Did he start with D or start with A?<br/>25 A. He mumbled A through C to get him to D. He</p>          |



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| <p>BUGBEE Page 65</p> <p>1 recited D. Went all the way to V and then returned to O.<br/>2 Q. So that would be interpreted by some<br/>3 individuals as a failed test. True?<br/>4 A. No, because there's other observations that<br/>5 need to be taken into account.<br/>6 Q. What other observations?<br/>7 A. Although he did the test improperly, he did<br/>8 it with clear speech. He wasn't confused. Although he<br/>9 did it wrong, he wasn't necessarily confused. The<br/>10 letters were said in sequence or the letters were said in<br/>11 sequence. He maintained a steady position of balance<br/>12 throughout the test.<br/>13 I interpreted as though he was confused<br/>14 of what he was asked because it was never said, quote,<br/>15 without saying any other letters. He just said: Go from D<br/>16 to O. He didn't say: Don't say any other letters.<br/>17 Q. All right. Any other tests that are field<br/>18 sobriety tests other than the three standardized field<br/>19 sobriety tests, of which we have already spoken about<br/>20 two?<br/>21 A. Finger count. He did the finger count at<br/>22 1:52 and 59 seconds.<br/>23 Q. Anything else?<br/>24 A. He, at 1:56 and 38 seconds, he did a modified<br/>25 Romberg.</p> | <p>BUGBEE Page 67</p> <p>1 A. The way it said in the manual.<br/>2 Q. Well, the manual covered non-verifiable field<br/>3 sobriety testing and if so what manual was that?<br/>4 A. That was the aforementioned manual that I had<br/>5 spoken of, being the Advanced Road Side Impaired Driving<br/>6 Enforcement Manual.<br/>7 Q. Now that you had the hard copy there what was<br/>8 the edition of that again?<br/>9 A. That was the R5 slash 13 edition.<br/>10 Q. Okay.<br/>11 A. As stated earlier.<br/>12 Q. Any other field sobriety tests that were<br/>13 performed that we haven't talked about, knowing full well<br/>14 that there is a second walk and turn and we have not yet<br/>15 talked about the HGN?<br/>16 A. No.<br/>17 Q. Was the HGN test performed?<br/>18 A. Yes.<br/>19 Q. Do your notes reflect at what time on the<br/>20 tape that you were provided you saw the HGN test<br/>21 performed?<br/>22 A. 1:58 and five seconds a.m.<br/>23 Q. Was it administered properly?<br/>24 A. I don't believe so.<br/>25 Q. In addition to the belief that it was not</p>  |
| <p>BUGBEE Page 66</p> <p>1 MR. RADNER: Can you spell that<br/>2 please?<br/>3 THE WITNESS: R-o-m-b-u-r-g, I<br/>4 believe.<br/>5 Q. What is the modified Romberg?<br/>6 A. Well, that was instructed to be: Close his<br/>7 eyes. Hold his head back. And I don't believe that was<br/>8 instructed properly based on the NHTSA guidance. But he<br/>9 was instructed to hold his head back. Close his eyes and<br/>10 let him know when 30 seconds were over.<br/>11 Q. What was improper with respect to that<br/>12 instruction?<br/>13 A. It doesn't instruct that the driver or<br/>14 suspect is to count in their head. It just says: Let me<br/>15 know when you think 30 seconds is over at the end of the<br/>16 test.<br/>17 Q. Isn't that implied, if you are going to let<br/>18 me know when 30 seconds are over that you're counting in<br/>19 your head?<br/>20 A. But that's not part of the test to ask how<br/>21 they counted. That seemed to be important to Officer<br/>22 Wierszewski, the manner in which he counted. That's not<br/>23 even instructed in the NHTSA manual. So it just wasn't<br/>24 in compliance with the way they instructed.<br/>25 Q. With the way that you instructed, correct?</p>                              | <p>BUGBEE Page 68</p> <p>1 properly administered, any other criticisms of the manner<br/>2 in which that test was conducted?<br/>3 A. No.<br/>4 Q. With respect to the administration of that<br/>5 test, what is it that you believe was improperly<br/>6 completed or completed?<br/>7 A. Well, it appeared as though it was mixed with<br/>8 another test that is called the lack of convergence test.<br/>9 So there was --<br/>10 Q. What page are you reading from Exhibit 7?<br/>11 A. Five.<br/>12 Q. Page five. Thank you. Continue, please.<br/>13 A. It appeared that the HGN test, the horizontal<br/>14 gaze nystagmus, was conducted in conjunction with the<br/>15 lack of convergence test, which are two different tests.<br/>16 They were both mixed into one test, which I believe<br/>17 complicates the horizontal gaze nystagmus in that the<br/>18 NHTSA guidance warns of fatiguing the eyes prior to<br/>19 getting or prior to getting a good test. Eye fatigue is<br/>20 a factor and a negative HGN test for the NHTSA guidance.<br/>21 Q. Was there a negative HGN test?<br/>22 A. I don't believe there was.<br/>23 Q. What do you believe -- again, let me just see<br/>24 that I'm clear. The video that you were provided with<br/>25 when the HGN test, and in your opinion the co-mingled</p> |

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| <p>BUGBEE Page 69</p> <p>1 convergence test occurred, you could not see the face or<br/>2 eyes of the subject. True?</p> <p>3 A. True.</p> <p>4 Q. Mr. Thibault's back was facing the camera.<br/>5 Correct?</p> <p>6 A. Correct.</p> <p>7 Q. So neither you nor I or someone who only has<br/>8 benefit of looking at this tape, we cannot objectively<br/>9 state what the actual response Mr. Thibault had to that<br/>10 test or in your opinion tests pleural. True?</p> <p>11 A. True.</p> <p>12 Q. Were the results of the HGN test recorded<br/>13 anywhere in the records completed by Officer Wierszewski?</p> <p>14 A. They were captured on the videotape.</p> <p>15 Q. Are they identified anywhere in his written<br/>16 report?</p> <p>17 A. No.</p> <p>18 Q. So there's nothing mentioned in the DRE<br/>19 report about that?</p> <p>20 A. He says he failed the HGN test but I don't<br/>21 know which one it was. He gave it to him three times.</p> <p>22 Q. So that test was provided in your opinion to<br/>23 the subject on three occasions. Correct?</p> <p>24 A. Correct.</p> <p>25 Q. Were any of those occasions when the subject</p> | <p>BUGBEE Page 71</p> <p>1 A. At 12 -- excuse me. At 2:50 and 28 seconds<br/>2 the HGN was given, again, in the booking room. It's the<br/>3 second time it's given.</p> <p>4 Q. Was it given by Officer Wierszewski?</p> <p>5 A. Yes.</p> <p>6 Q. How much time elapsed between the one at the<br/>7 traffic stop and this one in the booking; over an hour?</p> <p>8 A. The one at the traffic stop was at 1:58. The<br/>9 one in the booking room was at 2:50. Less than an hour.</p> <p>10 Q. So about 50 minutes between the two?</p> <p>11 A. Roughly. 52 minutes.</p> <p>12 Q. You're not suggesting that the HGN performed<br/>13 at the traffic stop fatigued Mr. Thibault's eyes with<br/>14 respect to the second HGN performed 50 minutes later, are<br/>15 you?</p> <p>16 A. No. I'm basing my conclusion merely on the<br/>17 officer's statement.</p> <p>18 Q. What is it of the officer's statement that<br/>19 you are basing your conclusion on?</p> <p>20 A. At 2:10 and 48 seconds another officer pulls<br/>21 up. Potentially a senior officer or supervisor because<br/>22 Mr. Officer Wierszewski felt the need to report to him<br/>23 and he said, quote: He hit the curb. He can't do<br/>24 some -- he can't do sobriety tests. He doesn't have HGN.<br/>25 That's what I base the results on, his statement: He</p> |
| <p>BUGBEE Page 70</p> <p>1 was at the station after being removed from the stop?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know how much time elapsed between<br/>4 those tests?</p> <p>5 A. Yes.</p> <p>6 Q. How much time elapsed -- well, strike that.<br/>7 How many HGN's did you see administered<br/>8 at the scene of the stop?</p> <p>9 A. One.</p> <p>10 Q. How many did you see administered at the<br/>11 station?</p> <p>12 A. At least one. But I don't know what happened<br/>13 when they went off camera. Mr. Thibault was taken off<br/>14 camera for a few tests I believe. The audio sounded like<br/>15 they were doing sobriety tests off camera.</p> <p>16 Q. Did you see the performance of any HGN tests<br/>17 captured on the video reflecting the activities at the<br/>18 station?</p> <p>19 A. Could you repeat that?</p> <p>20 Q. Sure. Did you see, when you reviewed the<br/>21 station videotapes --</p> <p>22 A. Oh.</p> <p>23 Q. -- the administration of any HGN tests and if<br/>24 so, at what time on the video footage did you see such<br/>25 tests administered?</p>   | <p>BUGBEE Page 72</p> <p>1 doesn't have HGN to his counterpart.</p> <p>2 Q. What does that mean to you?</p> <p>3 A. That means that he didn't test positive for<br/>4 horizontal gaze nystagmus.</p> <p>5 Q. So in your opinion that statement would<br/>6 validate that there was no jerking eye movement during<br/>7 the performance of that test in the horizontal plane.<br/>8 Correct?</p> <p>9 A. I just take it on its face that it was a<br/>10 negative test because the officer said so.</p> <p>11 Q. All right. Now anything else about the HGN?</p> <p>12 I think you indicated you thought that it was improperly<br/>13 provided. Have we covered all of your criticisms of the<br/>14 administration of that test by Officer Wierszewski that<br/>15 you believe were inappropriate?</p> <p>16 A. Those are my observations, however, I did<br/>17 observe that during the test Mr. --</p> <p>18 Q. What page are you reading from your notes;<br/>19 upper right corner.</p> <p>20 A. Yes. I know where the page number is. I'm<br/>21 just reading.</p> <p>22 Q. Okay.</p> <p>23 A. I'm looking at page number five.</p> <p>24 Q. Okay. What on that page were you about to<br/>25 tell me about during the test?</p>  |

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| <p>BUGBEE Page 73</p> <p>1 A. That is all.</p> <p>2 Q. That was it?</p> <p>3 A. That's all.</p> <p>4 Q. Any criticisms?</p> <p>5 A. I have no other observations.</p> <p>6 Q. I'm looking at the bottom of five and it</p> <p>7 says: 33. I'm assuming that is Officer Wierszewski.</p> <p>8 Turns on light and instructs defendant to watch light.</p> <p>9 Tests done improperly. 33. Doing large circles. Three</p> <p>10 eye crosses. Four circles. 11 horizontal deviations.</p> <p>11 Extended max D beyond three seconds.</p> <p>12 Is any of that critical of the</p> <p>13 administration of the test?</p> <p>14 A. That's consistent with my observation that</p> <p>15 mixing the lack of convergence with the HGN could fatigue</p> <p>16 the eyes. It was never my practice to do that many</p> <p>17 movements. Typically I would do it in three or four</p> <p>18 quick movements.</p> <p>19 Q. I'm just trying to figure out what that</p> <p>20 refers to when obviously that refers to your very first</p> <p>21 criticism of the mixing of the two tests. Correct?</p> <p>22 A. That is documentation of the mixing of the</p> <p>23 two tests.</p> <p>24 Q. Are you critical of any of the three</p> <p>25 standardized field sobriety tests that we have already</p> | <p>BUGBEE Page 75</p> <p>1 A. No, I don't have any.</p> <p>2 Q. Okay.</p> <p>3 A. Yes, I can answer your question. The answer</p> <p>4 is no.</p> <p>5 Q. That's fair enough.</p> <p>6 What is it that you reviewed if anything</p> <p>7 to render an opinion as it relates to the City of Grosse</p> <p>8 Pointe Farms?</p> <p>9 MR. RADNER: I'm going to object that</p> <p>10 it calls for a legal conclusion but if you can</p> <p>11 answer that question.</p> <p>12 A. I don't know what you're asking.</p> <p>13 Q. Early on in the deposition, Mr. Bugbee, I</p> <p>14 asked if you were going to render opinions critical of</p> <p>15 Officer Wierszewski and the City of Grosse Pointe Farms.</p> <p>16 And my recollection is that you indicated an affirmative</p> <p>17 response to both of those questions.</p> <p>18 In so much as you have just indicated to</p> <p>19 me that you have no other opinions related to Officer</p> <p>20 Wierszewski, other than you believe he did not have probable</p> <p>21 cause to arrest Mr. Thibault, I'm now moving to the City of</p> <p>22 Grosse Pointe Farms to ascertain what opinions if any you</p> <p>23 will be asserting before the Jury if allowed to do so in</p> <p>24 this matter?</p> <p>25 A. I clearly misunderstood the scope of that</p> |
| <p>BUGBEE Page 74</p> <p>1 talked about that we haven't already discussed?</p> <p>2 A. Am I critical?</p> <p>3 Q. Any other criticisms I guess is what I'm</p> <p>4 asking you other than what we have already discussed?</p> <p>5 A. I don't have criticisms other than I don't</p> <p>6 believe they rose to the level of probable cause for an</p> <p>7 arrest in and of themselves.</p> <p>8 Q. With respect to the performance of Officer</p> <p>9 Wierszewski, as it relates to his arrest, am I correct</p> <p>10 that your opinion is that he had no probable cause to</p> <p>11 arrest him for OWI?</p> <p>12 A. Correct.</p> <p>13 Q. Any other opinions that you are going to</p> <p>14 render against Officer Wierszewski in this case?</p> <p>15 MR. RADNER: I'm going to object to</p> <p>16 the form of that question.</p> <p>17 You can answer it if you understood</p> <p>18 it.</p> <p>19 A. I have no criticisms toward Officer</p> <p>20 Wierszewski, other than he seemed to have ignored the</p> <p>21 evidence that he was developing to make his arrest</p> <p>22 decision.</p> <p>23 Q. Can you answer my question?</p> <p>24 A. No.</p> <p>25 Q. Okay.</p>  | <p>BUGBEE Page 76</p> <p>1 question. No, I don't have any criticisms against the</p> <p>2 City of Grosse Pointe Farms. I would like to correct</p> <p>3 that prior statement. No, I do not have criticisms.</p> <p>4 Q. You know what, I'm going to let you do that.</p> <p>5 Any other materials that you were kind enough to bring</p> <p>6 that we haven't already marked?</p> <p>7 A. I have got my training certificates.</p> <p>8 Q. Let's mark those. Are those copies that you</p> <p>9 made for me?</p> <p>10 A. These are copies of my training certificates.</p> <p>11 Q. Okay.</p> <p>12 (Deposition Exhibit No. 9 marked for</p> <p>13 identification.)</p> <p>14 Q. Are you prepared to render any opinions in</p> <p>15 this matter against Officer Wierszewski related in any</p> <p>16 fashion whatsoever to the dismissal of the misdemeanor</p> <p>17 charges brought against him in January of 2015?</p> <p>18 MR. RADNER: I'm going to object to</p> <p>19 that because I'm not sure I understand that</p> <p>20 question.</p> <p>21 A. I don't understand.</p> <p>22 MR. DEGROOD: Would you read it back</p> <p>23 again?</p> <p>24 (Record repeated.)</p> <p>25 A. Was Wierszewski charged.</p>  |

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| <p>BUGBEE Page 77</p> <p>1 Q. No. Perhaps I misspoke. Are you in any<br/>2 position to render any opinions against Officer<br/>3 Wierszewski with respect to the dismissal of the<br/>4 misdemeanor charges brought against Mr. Thibault which<br/>5 were dismissed in January of 2015?<br/>6 A. No.<br/>7 Q. Am I correct that you have no knowledge one<br/>8 way or the other with respect to what role if any Officer<br/>9 Wierszewski had in the dismissal of the misdemeanor<br/>10 charges?<br/>11 A. You're correct.<br/>12 MR. DEGROOD: Let's go off the<br/>13 record.<br/>14 (Brief recess.)<br/>15 Q. Mr. Bugbee, are you at this point in time<br/>16 rendering any opinion related to Officer Wierszewski<br/>17 concerning the claims of malicious prosecution being made<br/>18 against him?<br/>19 A. No.<br/>20 Q. I think you have already indicated that you<br/>21 have no opinions related to the City of Grosse Pointe<br/>22 Farms, correct?<br/>23 A. Correct.<br/>24 MR. RADNER: Subject to my objection<br/>25 to that question.</p>   | <p>BUGBEE Page 79</p> <p>1 A. Correct.<br/>2 Q. It was not a violation of any of Mr.<br/>3 Thibault's rights on 12-5-14 when Officer Wierszewski<br/>4 asked him if he was suffering from any medical issues?<br/>5 A. Correct.<br/>6 Q. Would you also agree that it was not a<br/>7 violation of Mr. Thibault's rights when Officer<br/>8 Wierszewski asked him at what time he had started driving<br/>9 that evening?<br/>10 A. Correct.<br/>11 Q. Would you also agree that it was not a<br/>12 violation of Mr. Thibault's rights when Officer<br/>13 Wierszewski asked him to explain what had happened with<br/>14 respect to his vehicle coming into contact with the<br/>15 island median?<br/>16 A. Correct.<br/>17 Q. Would you agree that it was not a violation<br/>18 of Mr. Thibault's rights for Officer Wierszewski to ask<br/>19 him if he had had anything to drink that evening?<br/>20 A. Correct.<br/>21 Q. Would you also agree that it was not a<br/>22 violation of Mr. Thibault's rights for Officer<br/>23 Wierszewski to ask Mr. Thibault to participate in the<br/>24 standard field sobriety test and field sobriety test that<br/>25 evening?</p> |
| <p>BUGBEE Page 78</p> <p>1 Q. Have you at any point in time been provided<br/>2 with a copy of the actual Complaint filed in United<br/>3 States District Court against my clients?<br/>4 A. Yes.<br/>5 Q. Would you agree with the statement: That<br/>6 every arrest of a citizen by a law enforcement officer<br/>7 requires a judgment call be made on behalf of the<br/>8 arresting law enforcement officer?<br/>9 A. Yes.<br/>10 MR. RADNER: What do we want a copy<br/>11 of here?<br/>12 (Brief recess.)<br/>13 Q. Would you agree that at the time of this<br/>14 particular stop by Officer Wierszewski that he was acting<br/>15 in furtherance of a legitimate government function?<br/>16 A. Yes.<br/>17 Q. As a retired Michigan State Police officer,<br/>18 you would agree that there were no violations of Mr.<br/>19 Thibault's rights related to the actual stop of him that<br/>20 evening?<br/>21 A. I would agree.<br/>22 Q. It was not a violation of Mr. Thibault's<br/>23 rights on 12-5-14 to ask for his CDL or commercial<br/>24 driver's license, logbook, medical card or annual<br/>25 inspection forms when he was stopped?</p> | <p>BUGBEE Page 80</p> <p>1 A. Correct.<br/>2 Q. Would you agree that it was not a violation<br/>3 of Mr. Thibault's rights for Officer Wierszewski to frisk<br/>4 him the evening he was stopped on 12-5 --<br/>5 A. Correct.<br/>6 Q. -- '14.<br/>7 A. Correct.<br/>8 Q. And would you agree that Mr. Thibault<br/>9 voluntarily consented to allow the officers to search his<br/>10 semi tractor the evening of 12-5 --<br/>11 MR. RADNER: I'm going to object to<br/>12 that.<br/>13 Q. -- '14.<br/>14 MR. RADNER: You can answer it if you<br/>15 can.<br/>16 A. I don't recall if a full and willing waiver<br/>17 of that. I think he --<br/>18 Q. Do you recall the question being asked of Mr.<br/>19 Thibault?<br/>20 A. I think it went something to the effect of:<br/>21 You don't mind if I look in your car, do you?<br/>22 And Mr. Thibault said no. So I don't<br/>23 know if that's a --<br/>24 Q. It was not inappropriate for Officer<br/>25 Wierszewski to ask Mr. Thibault, prior to the</p>  |



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| <p>BUGBEE Page 81</p> <p>1 administration of any standard field sobriety test or<br/>2 field sobriety test, whether he, Mr. Thibault, had any<br/>3 problems or difficulties with standing, sitting or<br/>4 walking?<br/>5 A. No.<br/>6 Q. Did you see any evidence in any of the<br/>7 materials that were provided to you or procured by you<br/>8 that demonstrate Mr. Thibault ever telling Officer<br/>9 Wierszewski or any other officers who came into contact<br/>10 with him on December 5th, 2014, that he, Mr. Thibault,<br/>11 had a speech impediment?<br/>12 A. No. He did say he is slow though at one<br/>13 point. I don't know what that means.<br/>14 Q. He also indicated in response to questions<br/>15 that he did not have any physical problems and was not<br/>16 under a doctor's care, correct?<br/>17 A. Yes. He at one point said he was receiving<br/>18 doctor's care from V.A. That was never pursued.<br/>19 Q. Where was that? You can refer to your notes.<br/>20 (Brief recess.)<br/>21 MR. DEGROOD: Back on the record.<br/>22 Q. In case Mr. Bugbee has a response to the last<br/>23 question.<br/>24 MR. RADNER: Please identify which<br/>25 page number of Exhibit 7 you are looking at.</p>  | <p>BUGBEE Page 83</p> <p>1 A. Well, from my observations I believe that the<br/>2 amount of tests given and the repetitive tests was very<br/>3 excessive. I tested for navy pilot and I took the<br/>4 physical and I didn't go through this much to do that.<br/>5 So I think it was rather excessive and I<br/>6 think that Officer Wierszewski ignored the evidence that he<br/>7 collected all along the way to make his decision. It just<br/>8 appeared to be a results based investigation.<br/>9 Q. You didn't perform any physical exams on any<br/>10 Air Force pilot, did you?<br/>11 A. I was an Air Force OSI agent.<br/>12 Q. Pardon me?<br/>13 A. I was an Air Force OSI agent. We weren't<br/>14 allowed to do that.<br/>15 Q. What are you referring to when you just said:<br/>16 I gave the test to a pilot?<br/>17 A. No. I said I took the test for Navy pilot.<br/>18 Q. All right.<br/>19 A. And I went through quite extensive flight<br/>20 physicals and stuff. I was flabbergasted by how much he<br/>21 was putting this person through to try to get a positive<br/>22 result.<br/>23 Q. You mean to tell me, to get a seat in one of<br/>24 the United States Navy's aircraft you go through less<br/>25 than two to three hours testing overall?</p> |
| <p>BUGBEE Page 82</p> <p>1 A. I will do that. When he was being given the<br/>2 blood pressure test -- let's see. I'm sorry. I can't<br/>3 find exactly where it said but when he was given the<br/>4 blood pressure test he said something to the effect of:<br/>5 I have this done once a month. But right now I can't<br/>6 find it in here.<br/>7 Q. All right. In your experience is there any<br/>8 margin of error related to the standard field sobriety<br/>9 tests?<br/>10 A. If there is I wouldn't know what it is.<br/>11 Q. Would you know if it, that margin of error,<br/>12 is any different for a, quote, war combat veteran,<br/>13 unquote?<br/>14 A. I wouldn't know that.<br/>15 Q. Have you ever heard that at any time in your<br/>16 experience?<br/>17 A. I have never heard that.<br/>18 Q. Because I'm winding down, I'm going to ask<br/>19 one more time. Any other opinions that you will be<br/>20 rendering that are critical -- and by critical I mean<br/>21 demonstrative of a deviation from the standards expected<br/>22 of a reasonable and prudent public safety officer as they<br/>23 existed on December 5th, 2014, under the circumstances of<br/>24 this case related to Officer Wierszewski that we have not<br/>25 already covered?</p> | <p>BUGBEE Page 84</p> <p>1 A. I don't recall officially what was contained<br/>2 in the test and what -- how long the duration was.<br/>3 Q. How old were you?<br/>4 A. I was 19.<br/>5 Q. Were you a member of the United States Navy?<br/>6 A. I was a Midshipman at University of Michigan.<br/>7 Q. So you were on the ROTC program?<br/>8 A. I was in the Naval ROTC program.<br/>9 Q. Upon graduation did you serve in the Navy?<br/>10 A. No. Upon graduation I -- actually I<br/>11 entered -- prior to graduation I entered the Air National<br/>12 Guard. I went from there to the Air Force Reserves where<br/>13 I was a Air Force Offices Special Investigations, Special<br/>14 Agent and reserve status.<br/>15 Q. Do you receive a pension from the Reserves?<br/>16 A. No.<br/>17 Q. Are you still a reservist?<br/>18 A. No.<br/>19 Q. When is the last time you participated as an<br/>20 Air Force reservist?<br/>21 A. I retired from the Air Force Reserve in 2010,<br/>22 20 years. And I will begin to receive a pension at the<br/>23 age of 59.<br/>24 MR. DEGROOD: Thank you. I have<br/>25 nothing further.</p>  |



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| BUGBEE   | Page 85 | BUGBEE   | Page 87 |
| 1 MR. RADNER: Two questions.                                   |         | 1 you would administer these field sobriety tests?           |         |
| 2 EXAMINATION  |         | 2 A. Oh, I would pursue whether or not they have             |         |
| 3 BY MR. RADNER:   |         | 3 been subject to any kind of a concussion from loud         |         |
| 4 Q. Can you please turn to page 14 of Exhibit 7.              |         | 4 explosions or gun fire. I would be concerned about their   |         |
| 5 And please tell me if that refreshes your recollection as    |         | 5 inner ear and the condition of it. Balance tests are all   |         |
| 6 to where in Exhibit 7 and where in the video there is        |         | 6 about the inner ear's capability to balance the body.      |         |
| 7 discussion of treatment at a VA.                             |         | 7 MR. RADNER: Nothing further.                               |         |
| 8 A. Okay. Yes.  |         | 8 MR. DEGROOD: Thank you, sir.                               |         |
| 9 MR. DEGROOD: What page are we on?                            |         | 9 (Deposition concluded at 1:10 p.m.)                        |         |
| 10 A. That's on page No. 14. At 2:47 and 05                    |         | 10 * * *   |         |
| 11 seconds Officer Wierszewski asked him: Do you have any      |         | 11   |         |
| 12 physical defects?   |         | 12   |         |
| 13 Mr. Thibault responds, quote: A little                      |         | 13   |         |
| 14 slow.   |         | 14   |         |
| 15 There's no pursuit of that by Officer                       |         | 15   |         |
| 16 Wierszewski.  |         | 16   |         |
| 17 He goes on to the next question: Are                        |         | 17   |         |
| 18 you under the care of a doctor or dentist is what           |         | 18   |         |
| 19 Wierszewski asked next.                                     |         | 19   |         |
| 20 Thibault answers: VA.                                       |         | 20   |         |
| 21 Still no pursuit of what for or                             |         | 21   |         |
| 22 anything.   |         | 22   |         |
| 23 Q. One last question. If you can turn to page               |         | 23   |         |
| 24 No. 11. This is just for reference. There was something     |         | 24   |         |
| 25 that you said to me about: Inner air 92 bravo infantry.     |         | 25   |         |
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| 1 Something about that that you thought peaked your            |         | 1 CERTIFICATE OF NOTARY PUBLIC                               |         |
| 2 interest.  |         | 2 State of Michigan )  |         |
| 3 Can you explain that, please.                                |         | 3 County of Oakland ) SS.                                    |         |
| 4 A. During conversation with 92 bravo, there was              |         | 4 I, the undersigned, do hereby certify that the             |         |
| 5 at 2:12:55, an unknown officer asked: What's your MOS.       |         | 5 witness, whose attached testimony was taken before me in   |         |
| 6 Mr. Wierszewski or -- excuse me -- Mr. Thibault says,        |         | 6 the above-entitled matter, was by me first duly sworn to   |         |
| 7 quote: 92 bravo, which I believe is a combat position.       |         | 7 to testify to the truth; that the testimony contained      |         |
| 8 When he is engaged in conversation,                          |         | 8 herein was by me reduced to writing in the presence        |         |
| 9 again later in the booking room, he tells another -- or I    |         | 9 of the witness by means of stenography; afterwards         |         |
| 10 think it was Veronica. I think that's Officer Cashion --    |         | 10 transcribed; and that this is a true and complete         |         |
| 11 that he was in infantry in the military. She engaged him in |         | 11 transcript of the testimony given by the witness.         |         |
| 12 cordial conversation.                                       |         | 12 I do further certify that I am not                        |         |
| 13 This was at 3:53 and 30 seconds Veronica                    |         | 13 connected by blood or marriage with any of the parties;   |         |
| 14 takes his fingerprints. He is very cooperative. Follows     |         | 14 their attorneys or agents; that I am not an employee      |         |
| 15 instructions. He is coordinated. Steady stance. No          |         | 15 of either of them; and that I am not interested, directly |         |
| 16 assistance needed standing. Veronica engages Mr. Thibault   |         | 16 or indirectly, in the matter in controversy.              |         |
| 17 in conversation about his job and the military.             |         | 17 In <del>witness's presence</del> I have hereunto set my   |         |
| 18 I believe at that point is when he tells                    |         | 18 hand. <i>Nikki Hatz Sinta</i>                             |         |
| 19 her he was in the infantry. This is -- what I have got      |         | 19   |         |
| 20 written down here is a summary of the situation and not     |         | 20   |         |
| 21 direct quotes because the conversation went on for a bit.   |         | 21   |         |
| 22 He talks about his trucking job. He talks about the         |         | 22   |         |
| 23 military. Says he's in infantry. All the time very cordial  |         | 23   |         |
| 24 and polite.   |         | 24   |         |
| 25 Q. Is there any significance to that with how               |         | 25   |         |